

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MAGISTRATE NO. 1-20-mj-14

AFFIDAVIT IN SUPPORT OF
CRIMINAL COMPLAINT

I, Michael Thoreson, being first duly sworn, hereby depose and state as follows:

1. I make this affidavit in support of an application for a Criminal Complaint.
2. I am a Special Agent with the FBI, and have been since February 2000. I am presently assigned to the Erie resident agency of the FBI.
3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents, law enforcement personnel and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested Criminal Complaint and does not set forth all of my knowledge about this matter.
4. Based on the facts set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Section 1001 have been committed by James Gilmore. Title 18, United States Code, Section 1001 states, in relevant part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
shall be fined under this title, imprisoned not more than 5 years ...
5. On January 25, 2020, the FBI was conducting video surveillance of 5023 Old Zuck Road, Erie, Pennsylvania. The surveillance was being conducted pursuant to an ongoing

FBI investigation. Information gathered from law enforcement investigators has revealed that James Gilmore resides at 5023 Old Zuck Road Apartment #3, Erie, Pennsylvania.

6. At all times during my viewing of the January 25, 2020 surveillance video depicting 5023 Old Zuck Road, Erie, Pennsylvania, the individual I know as James Gilmore wore a red sweatshirt and blue pants with white strips down the legs while depicted in the surveillance video. In addition, Gilmore had his hair held or tied to the rear of his head in the surveillance video. Gilmore's hair is black and has both volume and some length. The following events were observed during my review of the January 25, 2020 surveillance video depicting 5023 Old Zuck Road, Erie, Pennsylvania. The times provided below are the times taken from the surveillance video. In summary:

10:00 AM - A red/black color object came into the camera view. The object was in the parking lot. A male wearing black clothing comes into camera view, walks to the green dumpster, and then walks out of view to the same direction from which he came.

10:03 AM - A male wearing all black clothing enters into camera view from the direction where the red/black object was observed. The male enters Apartment #3.

10:05 AM through 10:28 AM – A male wearing black clothing exits Apartment #3 three times and re-enters two times.

10:28 AM – A male wearing black clothing pushes a motorcycle into camera view up to Apartment #3 and parks the motorcycle along the front of the building. The motorcycle is within feet of the front door to Apartment #3. The male walks out of view of the camera.

10:57 AM – A dark colored BMW arrives in the parking lot at 5023 Old Zuck Road, coming from the south. A vehicle parks two spaces away from a Cadillac Escalade. Windshield wipers continue to operate on the vehicle.

10:58 AM – A male wearing dark clothing enters Apartment #3. It is unknown where the male came from prior to entering Apartment #3. (16 seconds of video are not recorded. Recording goes from 10:58.22 to 10:58.38).

10:59 AM – The same male wearing dark clothing exits Apartment #3 and enters a BMW via the front driver's side door.

10:59 AM – The same male wearing dark clothing exits the front driver's door of the BMW and re-enters Apartment #3.

11:00 AM – The same male wearing dark clothing exits Apartment #3, heads to a Cadillac Escalade in the parking lot and appears to try and open the front driver's side door. The male then re-enters Apartment #3. (BMW windshield wipers continue to operate).

11:01 AM – The same male wearing dark clothing exits Apartment #3, enters the front passenger door of the Escalade and then goes back into Apartment #3.

11:01 AM – The same male wearing dark clothing exits Apartment #3 and enters the front driver's side door of the BMW.

11:02 AM – The BMW moves outside of camera view.

11:36 AM – The same male wearing dark clothing comes into camera view and enters Apartment #3.

11:42 AM – The same male wearing dark clothing exits Apartment #3 and moves out of camera view.

11:43 AM – James Gilmore exits Apartment #3 and moves out of camera view, heading in the same direction as the other male.

12:02 PM – James Gilmore appears in camera view, walks around the parking lot and then walks immediately adjacent to a motorcycle, walking past the full length of the motorcycle and then re-enters Apartment #3. Gilmore then exits Apartment #3 and walks around the immediate area of the motorcycle for approximately 1 minute. Gilmore then re-enters Apartment #3.

12:07 PM - Apartment #3 door opens. James Gilmore stands in the doorway next to the motorcycle. A male wearing black clothing reappears in camera view holding a motorcycle helmet. Gilmore meets up with the male. It appears that they speak to each other and both then enter Apartment #3.

12:09 PM – The same male wearing dark clothing exits Apartment #3 holding a motorcycle helmet. The male then re-enters Apartment #3.

12:10 PM – The same male wearing dark clothing exits Apartment #3 holding a motorcycle helmet and then puts on the helmet.

12:13 PM – The same male wearing all dark/black clothing and with a motorcycle helmet on, gets on the motorcycle and either pushes or drives motorcycle out of view of the camera.

12:17 PM – A female from Apartment #3 enters the driver's side front door of the Escalade and then exits again.

12:21 PM – A silver vehicle drives into camera view and drives up to the Escalade.

12:21 PM – The same male wearing dark/black clothing appears again on camera, pushes a motorcycle around while sitting on the motorcycle. The male appears to be wearing tan colored boots. The male leaves camera view.

12:28 PM - Apartment #3 door opens. James Gilmore stands in the doorway of Apartment #3 looking in the direction of the Escalade towards where a male wearing black clothing is standing. The male wearing dark/black clothing is walking around with a helmet on near the Escalade and he then looks inside the Escalade's engine compartment.

12:30 PM - Apartment #3 door opens. James Gilmore stands in the doorway of Apartment #3 looking in the direction of the Escalade. The same male wearing dark/black clothing is under the hood of the Escalade.

12:33PM – The same male wearing dark/black clothing enters into Apartment #3. The same male then leaves shortly afterwards.

12:35 PM - Apartment #3 door opens. James Gilmore stands in the doorway of Apartment #3 looking in the direction of the Escalade. The male wearing black clothing is near the Escalade.

12:37 PM – A dark/black BMW drives into view of camera. The BMW parks next to the Escalade. The male wearing black clothing is reaching in and out of what appears to be the trunk of the BMW.

12:40 PM – The same male wearing dark/black clothing pushes or drives the motorcycle back onto the porch that is immediately adjacent to the front door of Apartment #3. The male wearing dark/black clothing then enters Apartment #3 with the motorcycle helmet on his head.

12:42 PM – The same male wearing dark/black clothing exits Apartment #3.

12:56 PM – The same male wearing dark/black clothing starts up the motorcycle and departs the area within camera view.

2:29PM - The same motorcycle that was observed two hours earlier is driven into camera view. The male is wearing the same dark/black clothing that was previously observed but now has no helmet on his head. The male then drives the motorcycle around the back of the apartment building, around a green dumpster.

2:30 PM – The male wearing dark/black clothing walks into camera view from the area where he drove the motorcycle. He then walks up to Apartment #3 and enters the apartment.

2:45 PM – A red vehicle arrives, a person exits the vehicle, appears to knock on the door to Apartment #3 and then walks into Apartment #3.

3:01 PM – An unknown person exits Apartment #3 and heads out of camera view. Shortly after, a vehicle door can be seen opening and coming into camera view.

3:02 PM – The red vehicle leaves. The unknown person does not reappear.

3:08 PM – A male, matching the description of the male previously observed wearing dark/black clothing, exits Apartment #3. The male is now wearing gray pants, a greenish color jacket and white shoes. James Gilmore leaves Apartment #3 and follows the male. The two exit the area within camera view. Shortly after, a portion of what appears to be a vehicle trunk comes into camera view. The male wearing the greenish jacket walks into camera view holding a large blue bag or tarp that is consistent in color and size to a blue covering later observed on the motorcycle. The male walks out of camera view toward the location where the motorcycle had been previously driven behind the apartment building. James Gilmore follows.

3:09 PM – James Gilmore reappears and heads out of view of the camera, toward the same area where the trunk appeared in the surveillance video. Gilmore heads toward Apartment #3, enters, exits again, and then walks back to same area out of view of the camera.

4:08 PM – The dark/black BMW reappears in camera view, driven from south of the parking lot toward a parking space next to the Escalade.

4:09 PM – James Gilmore exits the BMW from the passenger side front door. The male now wearing the greenish jacket exits the BMW from the front driver's side door. An unknown male exits the BMW from the passenger side rear door. All three individuals enter Apartment #3.

4:10 PM - The unknown male exits Apartment #3. It is unknown where the male goes.

4:18 PM – James Gilmore exits Apartment #3. Immediately after, the male wearing the greenish jacket exits Apartment #3 carrying a black garbage style bag in his right hand. The male wearing the greenish jacket walks toward the green dumpster, looks at the opening of the dumpster, turns around and heads back to Apartment #3. The male is no longer holding or carrying the black bag. In between when the male walks up to the dumpster and is then observed turning around, approximately 1.4 seconds is not recorded by the camera.¹

4:19 PM – The unknown male previously observed exiting Apartment #3 at 4:10 PM exits the BMW.

4:21 PM – James Gilmore exits Apartment #3. Gilmore enters the BMW through the passenger side front door. The male wearing the greenish jacket enters the BMW via the front driver's side door.

4:22 PM – The BMW leaves the area within camera view, heading south through the parking lot. As the BMW is driven through the parking lot it reappears in camera view and then disappears again out of camera view. During the time the BMW can be observed within camera view, it is identified as a black/dark in color BMW sedan.

7. After the BMW was observed leaving the area of 5023 Old Zuck Road, Erie, Pennsylvania, the Pennsylvania State Police (PSP) observed the BMW near Zuck Road and attempted to conduct a traffic stop. The BMW eventually stopped and James Gilmore exited the BMW. The BMW then drove off at a high rate of speed. The BMW was later stopped by PSP near the Girard I-90 exit. The driver, Markese Lampley, was then arrested by PSP due to his attempt to flee a traffic stop. James Gilmore was taken by PSP to the PSP Girard barracks for questioning. Lampley was then charged on January 26, 2020, by PSP with first and second degree murder for his involvement in the January 25th shooting of an employee at the Wendy's restaurant located in Edinboro, Pennsylvania.

¹ Infrequently during the course of recording, the surveillance video skips a short time period, usually no more than few seconds. These short skips in time are not the result of operator activity but rather are believed to be the unfortunate result of limitations with the video equipment.

8. On January 25, 2020, at approximately 2:22 PM, a motorcycle matching the description of the motorcycle observed at 5023 Old Zuck Road was observed by witnesses to have been involved in a shooting at the Wendy's restaurant in Edinboro, Pennsylvania. Specifically, witnesses observed a robber enter the Wendy's wearing a motorcycle helmet. During the robbery, a scuffle ensued between the robber and an employee who was ultimately shot and killed by the robber. The robber then fled the scene on a motorcycle. After the shooting at the Wendy's in Edinboro, a motorcycle matching the description of the motorcycle scene fleeing the Wendy's robbery reappeared at 5023 Old Zuck Road and the driver of the motorcycle is depicted on the surveillance video entering James Gilmore's apartment.

9. While in an interview room at the Girard barracks on January 25, 2020, two PSP investigators provided James Gilmore his *Miranda* rights. Gilmore waived his rights and agreed to speak with PSP. The interview was recorded. During their interview, Gilmore stated that he had never observed a motorcycle at his residence, including earlier on January 25th. Gilmore repeated this several times. PSP conducted the interview for the purpose of determining who had operated the motorcycle observed in the FBI surveillance video leaving the 5023 Old Zuck apartment building. After several minutes of questioning, PSP departed the interview room and I then entered the interview room with the same PSP investigators. I was then introduced to Gilmore as an FBI agent by one of the PSP investigators. I then introduced myself and showed my FBI credentials to Gilmore. Gilmore indicated that he understood that I was an FBI agent. Gilmore again repeated he had no knowledge of any motorcycle at his residence. Gilmore stated that he knows motorcycles, enjoys them, and would remember if he had observed a motorcycle at his residence. Gilmore indicated that he had no reason to lie. Gilmore was advised that lying to a federal agent is a crime and that he could be charged under 18 USC § 1001. Gilmore stated

that he understood and again repeated that he was not lying. Gilmore was asked if anyone had entered his apartment earlier in the day (January 25th) wearing a motorcycle helmet. Gilmore stated that no one had entered his apartment wearing a helmet. Gilmore was told that investigators have video surveillance of the motorcycle next to Gilmore's apartment, along with video of a person entering Gilmore's residence wearing a helmet. Gilmore stated that he had no reason to lie and again stated that he had not lied. Gilmore stated that the red sweatshirt he was wearing at the PSP barracks was the same red sweatshirt he had worn all day and that he had worn the same shirt the day prior as well. Gilmore also revealed that he was still wearing the same blue pants with white stripes that he had been wearing all day. I then departed the interview room with the two PSP investigators.

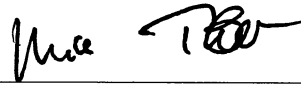
10. I have viewed the FBI surveillance video of the 5023 Old Zuck Road address, and observed that on the video a person matching the description of James Gilmore is wearing a red sweatshirt and blue pants with white stripes. These same articles of clothing observed in the video of 5023 Old Zuck Road are consistent with the clothing worn by James Gilmore while he was at the PSP barracks.

11. Gilmore was transported by PSP to the Erie County Prison where he is currently being held.

12. In summary, on January 25, 2020, video surveillance at 5023 Old Zuck Road shows James Gilmore coming and going into his residence, Apartment #3. Several times when Gilmore exits his apartment, a black and red motorcycle is parked immediately next to Gilmore's apartment. Furthermore, the male who drove the motorcycle comes and goes into Apartment #3, and at times, the surveillance video depicts Gilmore and the male appearing to speak to each other while the male is wearing a motorcycle helmet.

13. During the interview with Gilmore by both PSP investigators and myself, James Gilmore stated multiple times that he had never observed a motorcycle at his apartment on January 25, 2020. Furthermore, Gilmore stated that he had never seen a person wearing a helmet enter or be at his apartment. Recorded video surveillance of 5023 Old Zuck Road for January 25, 2020, demonstrates that these statements are materially false. The criminal conduct under investigation for which I interviewed James Gilmore on January 25, 2020 falls within the jurisdiction of the FBI because the robbery occurring at the Wendy's in Edinboro on January 25, 2020 was a violation of 18 U.S.C. § 1951, commonly referred to as Hobbs Act robbery.

Respectfully submitted,



Michael Thoreson
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to
before me on January 27, 2020



Richard A. Lanzillo
United States Magistrate Judge